

Exhibit 2

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)
4

5 IN RE:)
6)
7 CUSTOMS AND TAX ADMINISTRATION OF)
8 THE KINGDOM OF DENMARK)
9 (SKATTEFORVALTNINGEN) TAX REFUND)
10 SCHEME LITIGATION)
11)
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C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL
EXAMINATION OF
GRAHAM WADE

DATE: March 16, 2022

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 13

1 G R A H A M W A D E ,
2 called as an expert witness, having been
3 first duly sworn according to law, testifies as
4 follows:

5

6

7 EXAMINATION BY MR. PRUDEN:

8 Q Good morning Mr. Wade?

9 A Good morning. Sorry.

10 Can we get the -- I can't actually
11 see who's talking.

12 MR. OXFORD: Okay. Greg, can you
13 say something, make sure we have our
14 video fixed on you?

15 MR. PRUDEN: Sure. Can you hear me
16 now? Can you see me now?

17 THE WITNESS: That's fine. Sorry.

18 MR. OXFORD: Yeah, you're ready for
19 your close-up.

20 Just before you start, Greg, I
21 wanted to put something on the record.

22 We have an agreement with counsel
23 that communications during deposition
24 breaks between the parties' counsel and
25 the parties' expert will remain

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 42

1 potentially be one thing that you would want
2 to take into account.

3 Q The HMRC is the party who
4 ultimately decides whether tax is due on
5 particular transactions or income.

6 Right?

7 MR. OXFORD: Objection to the form.

8 A Unfortunately, that's incorrect. I
9 believe it's -- it's the law, and ultimately
10 the courts that decide what tax is due.

11 But they are the administrative
12 branch of the tax system.

13 Q Okay. And so the ultimate question
14 of whether tax is due is a legal one.

15 Right?

16 MR. OXFORD: Objection to form.

17 A Again, that's quite a wide-ranging
18 question. So to be more precise in my
19 answer, I think you need to narrow it down a
20 bit.

21 But certainly in the U.K., taxes
22 paid under tax law, and the question of how
23 to interpret that tax law, is ultimately a
24 question for the courts.

25 Q Okay. Are you aware of any similar

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 44

1 Q Okay. So your report is
2 describing, then, your understanding of the
3 facts surrounding the transactions?

4 MR. OXFORD: Object to form.

5 A Well, I think my -- my opinions are
6 as laid out in the report. So the -- you
7 know, the opinions taken in the whole, with
8 the work in the report, those are my
9 opinions.

10 And if you want me to talk about
11 any specific individual one, I'm happy to do
12 that.

13 Q Okay. But your report is not
14 providing an opinion on the ultimate legal
15 interpretation of the transactions you
16 analyzed?

17 MR. OXFORD: Object to the form.

18 A That's not quite what I said. What
19 I was saying is I did not understand my role
20 to be one of providing expert opinions on
21 Danish tax law matters.

22 That's slightly different.

23 Q Okay. And I'm not sure that was
24 completely responsive to my question, though.

25 I just am asking you whether or

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 45

1 not, regardless of what you've said, your
2 report is providing an opinion on the
3 ultimate legal interpretation of the
4 transactions you analyzed?

5 MR. OXFORD: Same objection.

6 A I think my -- again, my opinions, I
7 think, speak for themselves, and the full
8 terms of my opinions, any caveats and any
9 details supporting those opinions, are as
10 laid out in my report.

11 Q Okay. Do you consider, though,
12 that the opinions that you've provided are
13 about the legal interpretation of the
14 transactions you analyzed?

15 MR. OXFORD: Object to form.

16 A There's a -- I do not understand my
17 role as one of providing legal opinions. The
18 opinions given in my report are based on my
19 understanding of the transactions that
20 actually took place and the consequences of
21 those transactions.

22 Q Okay. You also cite in these
23 publicly available documents standards
24 released by the European Central Bank and
25 Eurosystem.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 58

1 dividends, that -- I don't believe it's a
2 legal conclusion to say that no entity
3 received a dividend.

4 Q Okay. So --

5 A But somehow --

6 MR. OXFORD: Hold on. Greg, can
7 you let the witness answer the question?

8 MR. PRUDEN: Sorry. I thought he
9 was done. He can finish his answer.

10 A No, actually that's fine. It's
11 fine. I'm done.

12 Q Okay. Well, we can agree that the
13 opinions that you're expressing in this
14 report are not legal opinions about whether
15 the transactions that were executed by the
16 various defendants would entitle them to a
17 dividend.

18 Right?

19 MR. OXFORD: Objection, form.

20 A No. My opinions relate to the
21 transactions that were executed and what
22 happened. And as I said, in the case of Solo
23 transactions, if there are no shares, I think
24 it's -- I think it's clear my opinion is
25 there were no shares, and therefore there

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 59

1 were no dividends.

2 So I don't consider that to be a
3 legal opinion.

4 Q Is there any reason that you're not
5 answering that question just a "yes" or "no?"
6 Is there nuance to the fact that you're not
7 providing a legal opinion on this?

8 You say it in Paragraph 9.

9 MR. OXFORD: Objection, asked and
10 answered. You can answer it again.

11 A I think you and I just have a
12 difference of opinion on whether the question
13 of whether an entity received a dividend is a
14 legal opinion. Maybe it has legal
15 consequences.

16 MR. OXFORD: Hold on, Greg. You
17 asked the question. Please give the
18 witness the courtesy of letting him
19 answer it before your next question.

20 So Greg, can you please read the
21 question -- sorry. Mike, can you read
22 the question back and let Mr. Wade give
23 his full answer to the question?

24 (Whereupon the record was read back
25 by the reporter.)

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 60

1 MR. OXFORD: Okay. And could you
2 read, please, Mike, the answer that was
3 cut off for Mr. Wade.

4 (Whereupon the record was read back
5 by the reporter.)

6 MR. OXFORD: Mr. Wade, I think you
7 were about to say something else. I
8 mean, your flow may have been entirely
9 interrupted, but I want to make sure
10 you've had an opportunity.

11 A I think, probably, just to finish
12 off, I mean, I think I've expressed it there.
13 As -- you know, reviewing these transactions,
14 if an entity does not have shares, and
15 therefore it doesn't receive a dividend, I do
16 not believe that to be expressing a legal
17 opinion.

18 Q Okay. Your view of the thrust of
19 your report is that where an entity doesn't
20 have shares, they haven't received a
21 dividend?

22 MR. OXFORD: Object to the form.

23 A No. The opinions in my report are
24 what they are, and they take into account all
25 the factors included in my report. So I'm

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 63

1 were no dividends received on the other -- on
2 the cum ex transactions.

3 Q Okay. And I'm asking you what you
4 consider your expertise to be that allows to
5 you draw that conclusion?

6 A My expertise? Well, it's, you
7 know, the -- I've spent a significant portion
8 of my career involved in structured financial
9 transactions, and I am able to -- you know, I
10 have reviewed the trades that were done, how
11 they were arranged, and all the details as
12 laid out in my report, and I -- I think I've
13 given the reasons why I reached those
14 conclusions as a result of that experience in
15 my report.

16 Q Okay. Again, if it's not a legal
17 opinion, would you agree that whether
18 financial transactions executed by the
19 various defendants would entitle an entity or
20 individual to a dividend is informed by legal
21 principles?

22 MR. OXFORD: Objection to form.

23 A No, not really, no. I think, as
24 I've said, my opinions lead me to conclude
25 that as a matter of fact, there were no

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 64

1 shares, and so there were no dividends.

2 And so I think that's a fairly
3 straightforward conclusion to draw from my
4 study of these transactions.

5 Q Okay. Other than for the trades
6 that you say were used for more than one tax
7 voucher -- withdrawn. Let me re-ask that
8 question.

9 Other than trades for which you say
10 shares were used to support more than one tax
11 voucher, is there any other basis for
12 concluding that any of the ED&F transactions
13 did not entitle the pension plans to
14 dividends?

15 MR. OXFORD: Objection.

16 A There are a number of -- as I said,
17 all of the bases for my opinions are included
18 in my reports and they should be taken as a
19 whole. So if you have a question on a
20 specific one, I'm very happy to answer it.

21 But it's a combination of all the
22 factors that I've covered in my report taken
23 together.

24 Q Okay. Can you tell me what those
25 factors are? Can you summarize them for me?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 65

1 MR. OXFORD: Objection to form.

2 A Okay. Well, apart from
3 the -- apart from the absence of shares, the
4 other most fundamental reason, although, as
5 I've said, there are others in my report, is
6 that the nature of the way the cum ex
7 transactions were structured is that even if
8 there had been shares, it would still not
9 have been the receipt of the dividend. It
10 would have been a receipt of a dividend
11 compensation payment.

12 Q Okay. And whether something is a
13 dividend or a dividend compensation payment,
14 that's informed by legal principles.

15 Right?

16 MR. OXFORD: Objection to form.

17 A I think it's formed by an
18 understanding of the market practice that
19 relates to security financing and equity
20 finance transactions.

21 Q Okay. So it's your testimony that
22 whether something is a manufactured dividend
23 or a real dividend or a dividend compensation
24 payment is not informed by any legal
25 principles?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 98

1 a final and binding agreement exists on the
2 acquisition or sale of the share?"

3 MR. OXFORD: Object to the form.

4 A No, I wouldn't. Again, I wouldn't
5 agree with that one because I don't think
6 that's right in terms of when ownership
7 rights associated with shares do change
8 hands.

9 But I would also ask you to be a
10 bit more precise in defining what you mean by
11 "ownership rights."

12 Q Would you agree with the principle
13 that "a buyer of a share owns the share at
14 the time when a final and binding agreement
15 exists on the acquisition of the share?"

16 MR. OXFORD: Object to the form.

17 A No.

18 Q Would you agree with that statement
19 if I told you that that principle is being
20 advanced by me in the context of Danish tax
21 law?

22 MR. OXFORD: Object to the form.

23 A I think, as I've stated earlier,
24 I'm not expressing opinions as to Danish tax
25 law. So I would -- I would not have an

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 106

1 have -- you know, there are a whole range of
2 different forms of legal ownership.

3 So I need you to be a bit more
4 precise.

5 Q Okay. Is it your understanding
6 that what it means to own a share depends on
7 the legal circumstances in which you're
8 asking that question?

9 MR. OXFORD: Objection to form.

10 A Again, the question of what
11 ownership means for the particular purposes
12 in which that question's asked, I need to
13 know what purposes it's asked, and all the
14 facts and circumstances that surround that
15 particular share.

16 So if you give me a specific
17 example, I can give you my thoughts.

18 Q Is it your testimony that you're
19 unable to tell me, as a general principle,
20 what it means to be a legal owner of a share
21 in Denmark?

22 MR. OXFORD: Objection.

23 A What I'm saying is that over the
24 course of my career I spent a long time and I
25 understand that the question you're asking me

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 107

1 can be a much more complex question than it
2 appears because it requires understanding the
3 exact facts and circumstances, for what
4 purpose, i.e., you know, is it tax, is it
5 accounting, is it regulation, is it, you
6 know, record holder from the issuer's
7 perspective?

8 There's a range of different ways
9 in which one can think about who the owner of
10 a share is. And without the full facts and
11 circumstances and the specifics and for what
12 purpose the question is being asked, I -- I
13 can't answer it.

14 Q Is it your understanding that the
15 legal owner of a share can be a different
16 person in different circumstances?

17 MR. OXFORD: Object to the form.

18 A It would be highly unusual if a
19 given share for the same -- going back to my
20 point about there are different
21 purposes -- if we're talking about a specific
22 definition of "ownership," in my experience,
23 it would be highly unusual if two people can
24 be the same owner of the share for the same
25 purpose.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 112

1 is you've given me no information about what
2 the terms of the transaction are, who the
3 people are, for what purpose they did the
4 transaction, whether it was on-exchange,
5 off-exchange.

6 You just haven't given me any
7 information, so I'm unable to answer your
8 question.

9 Q Okay. So you're unable to answer
10 my question? That's your answer?

11 A For the reasons I just gave, I am
12 unable to answer that question, yes.

13 Q Are you familiar with the term
14 "beneficial owner?"

15 MR. OXFORD: Object to the form.

16 A Yes.

17 Q What's your understanding of what
18 the definition of "beneficial owner" is?

19 MR. OXFORD: Object to the form.

20 A Again, it depends on the
21 circumstances and it can have -- even the
22 term "beneficial owner" can have different
23 meanings in different contexts.

24 But as a general proposition, it
25 tends to mean the person who has the overall

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 113

1 taken in the round, the overall economic,
2 legal, voting ownership rights of a -- of a
3 share.

4 Q In your view, is there a difference
5 between the concept of legal ownership and
6 the concept of beneficial ownership?

7 MR. OXFORD: Object to the form.

8 A As I've said earlier, you know,
9 beneficial ownership is a subcategory of what
10 might broadly be construed as legal
11 ownership.

12 So without being clear on what you
13 mean by "legal ownership," it's hard for me
14 to answer that.

15 Q Can you provide me with your
16 definition of what it means to be the "legal
17 owner" of a security?

18 MR. OXFORD: Object to the form,
19 asked and answered.

20 A No. Because my point is I would
21 need you to tell me for what purpose you
22 wanted a definition of "legal ownership."

23 Q Okay. It's your testimony that --

24 MR. OXFORD: Sorry.

25 MR. PRUDEN: Sorry. I thought you

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 125

1 when did the buyer of the shares become the
2 legal owner of the shares?

3 A I'm really sorry, that -- sorry. I
4 just didn't catch that question.

5 The sound has been a bit worse
6 since we've restarted again. I don't know if
7 that's -- that's the only change.

8 Sorry, but could you repeat the
9 question?

10 Q Yes. For the purposes of making a
11 tax reclaim application in Denmark, in the
12 transactions that you analyzed in this case,
13 when did the buyer of the shares become the
14 owner of those shares?

15 MR. OXFORD: Object to the form.

16 A I don't believe I've given an
17 opinion as to the requirements for when or
18 what exactly is required to make a tax
19 reclaim.

20 My opinions relate to the fact that
21 if we go back to the tax vouchers, there are
22 three key facts in the tax vouchers.
23 Number 1, that the pension plans held shares;
24 Number 2, that they received dividends; and
25 Number 3, that they suffered tax.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 126

1 And my opinions are fundamentally
2 that those three statements are false. But I
3 have offered no opinion as to, you know, what
4 the Danish tax consequences of -- as a result
5 of that are.

6 Q Okay. Well, you said that -- you
7 told me in response to a question that I
8 asked you, Mr. Wade, whether and in what
9 context I was using the term "ownership"
10 would inform your answer to my question.

11 I'm not asking you about opinions
12 that you provided or not. What I'm asking
13 you right now is whether you understand that
14 for the purpose of making a tax reclaim in
15 Denmark, when, in a securities transaction,
16 the ownership would transfer from the seller
17 to the buyer?

18 MR. OXFORD: Object to the form.

19 A And my response is that given the
20 opinions that I gave and the fact that I am
21 not giving opinions on Danish tax law, I have
22 not given an opinion on the question of what
23 the precise conditions required are to obtain
24 a Danish tax reclaim.

25 But it's my opinion that the three

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 127

1 key pieces of information on the tax voucher,
2 which I understand to have formed a very
3 important part of that tax group claim, in my
4 opinion, and based on my review, and for all
5 the reasons given in my report, that
6 information is false. So it seems highly
7 unlikely to me that that would mean that the
8 person is the owner for Danish tax purposes.

9 But that is not something I've
10 expressed an opinion on.

11 Q Okay. For the purposes of
12 determining whether a payment made from a
13 seller to a buyer in reference to a dividend
14 is a dividend or a manufactured dividend,
15 when do you understand that legal ownership
16 transfers in a securities transaction from
17 the seller to the buyer?

18 MR. OXFORD: Object to the form.

19 A I just don't think that's a
20 question that makes sense on its own terms.

21 A -- as I think I defined in my report, a
22 dividend compensation payment is a
23 contractual payment that arises under a
24 transfer -- a contract for the transfer of
25 securities.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 128

1 So I -- I don't think that your
2 question makes sense on its own terms.

3 Q Okay. Well, that's your
4 understanding of the definition of
5 "manufactured dividends?"

6 A Amongst other things, and, as laid
7 out in my reports, extensive experience over
8 the course of my career in understanding
9 equity finance transactions.

10 Q What is the definition of
11 "manufactured dividends?"

12 A I think -- I think I just gave a
13 definition which is, I believe, the one I
14 used in my report, which is it's a
15 contractual payment representative of a
16 dividend that arises under a contract for the
17 transfer of securities.

18 That, I think, is the generally
19 accepted definition based on my market
20 practice.

21 Q And what determines whether a
22 payment that's representative of a dividend
23 is, itself, a dividend or a manufactured
24 dividend?

25 MR. OXFORD: Object to form.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 159

1 execute a trade before the trade date, but
2 only deliver ex-dividend shares.

3 Q Okay. And is your only basis for
4 stating that ex-dividend shares were
5 delivered that the shares were delivered
6 after the record date?

7 MR. OXFORD: Object to the form.

8 A No, because -- and again, what
9 does -- what does "delivered" mean? That's a
10 slightly imprecise term.

11 But in the transactions in this
12 case and for all the reasons given in the
13 report, including the way they were
14 settled -- the pricing, who the
15 counterparties were, the nature of all the
16 arrangements -- it is clear to me that what
17 the parties intended to do was have a
18 contract where the cum ex seller had agreed a
19 trade under which they were going to deliver
20 ex-dividend shares.

21 That's -- that's my opinion.

22 Q Mr. Wade, I used your term. You
23 said, "What people understand that to mean is
24 a transaction where you're going to execute a
25 trade before the trade date but only deliver

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 188

1 authoritative source on this point.

2 Q Other than tax law, are you aware
3 of any sources of the distinction between a
4 dividend and a dividend compensation payment?

5 MR. OXFORD: Object to the form.

6 Misstates his testimony.

7 A I think as I've explained, anyone
8 who worked in the equity finance market in
9 Europe at the relevant period understood the
10 difference between a dividend compensation
11 payment and a real dividend. It had a number
12 of consequences for tax and other reasons.

13 And I think the definition that
14 HMRC that I cited to in my manual is
15 reflective of what market participants,
16 including myself, considered to be the
17 market's definition of a dividend
18 compensation payment.

19 Q And how did the market come to
20 establish that as a definition, in your view?

21 MR. OXFORD: Object to the form.

22 A The -- I don't really know where to
23 start with that question. There are -- you
24 know, transactions happen all the time,
25 practice develops, you know.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 208

1 European tax liability or their U.S. tax
2 liability, and that therefore, the overall
3 after-tax affect of acquiring the dividend
4 would be to receive a hundred percent of the
5 dividend on an after-tax basis.

6 Q All right.

7 MR. PRUDEN: Why don't we take a
8 short break? I'm conscious of the other
9 questioners who might want to ask. I'll
10 probably have a little more when we come
11 back, but I just want to organize a
12 little bit first to streamline this a
13 bit.

14 MR. OXFORD: Okay. Let's take ten
15 minutes.

16 THE VIDEOGRAPHER: Okay. Stand by.
17 The time is 12:50 p.m. New York time and
18 we're going off the record.

19 (Brief recess taken.)

20 THE VIDEOGRAPHER: Stand by. The
21 time is 1:06 p.m. New York time and
22 we're back on record.

23 Q I just have a few more minutes of
24 questions.

25 Are you familiar with a set of

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 209

1 options at Barclays for Renaissance

2 Technologies known as "Cult"?

3 MR. OXFORD: Object to the form.

4 A Yes.

5 Q And what do you understand Cult to
6 be?

7 A Well, I have to be careful here
8 because, you know, I -- under my contractual
9 position with Barclays, I have to be careful
10 about talking about the specifics of a given
11 transaction.

12 And this was a transaction that
13 Barclays executed for one of its clients, so.

14 Q Okay. Let's do it this way. I'll
15 ask you questions and you tell me if you
16 agree or not.

17 Were Cult options designed to be
18 written for a period of longer than 12 months
19 so that Renaissance could realize long-term
20 capital gains even on short-term trading that
21 they did within the options basket?

22 MR. OXFORD: Object to the form.

23 A The -- the transactions as I
24 understand them were originally designed by
25 Renaissance Technologies, so I am unable

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 210

1 to -- and also I was not involved in the
2 original execution of the transactions
3 because it went on -- the first transactions
4 were quite a long time ago.

5 So I can't comment on why they were
6 designed, what the reasons for the design
7 were.

8 Q Okay. But regardless of why they
9 were designed, you were aware of the fact, at
10 some point, that they didn't work.

11 Right?

12 MR. OXFORD: Object to the form.

13 A No, that's not -- that's not
14 correct.

15 Q Okay. Are you aware of the fact
16 that the IRS says that the transactions as
17 designed didn't work?

18 MR. OXFORD: Object to the form.

19 A I -- I am aware that at a certain
20 point in time the IRS -- the IRS issued a
21 notice stating that it was their position
22 that transactions which weren't explicitly
23 said to be the Renaissance transactions, but
24 which at the time I understood to be the
25 Renaissance transactions, they took the view

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 211

1 that they -- the Renaissance phrase did not
2 work, but that the options should be, in
3 effect, looked through for U.S. tax purposes.

4 Q Okay. I'm going to turn to
5 Exhibit 5008, please.

6 MR. OXFORD: Which one, Greg?

7 MR. PRUDEN: 5008. We'll mark this
8 as a new exhibit.

9 (Whereupon the above mentioned was
10 marked for Identification.)

11 (Whereupon a discussion was held
12 off the record.)

13 Q Do you have that in front of you,
14 Mr. Wade?

15 A I do.

16 Q Okay. And I'll represent to you
17 that the cover page says that this is
18 Exhibits 52 to 68, but to save some space on
19 these binders, we have cut it down to only
20 Exhibit 60 to 68.

21 Can you turn to the first page
22 after the cover page, Mr. Wade?

23 A Yeah.

24 Q And you wrote that this is a
25 detailed writeup of Cult, including it

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 212

1 doesn't work.

2 Right?

3 MR. OXFORD: Object to the form.

4 A I agree that that's what the e-mail
5 says, yeah.

6 Q And it's an e-mail that you wrote.

7 Right?

8 A That's correct.

9 Q Right. And what was your role at
10 Barclays as of November 12, 2010?

11 A I believe at that time I was the
12 head of the structured capital markets group
13 based in New York.

14 Q What were your responsibilities in
15 that role?

16 A My responsibilities were for
17 managing all of the activities of the
18 structured capital markets group in the
19 Americas, which included the U.S. and any
20 other parts of the Americas, although it was
21 primarily the U.S.

22 Q Did you have any role in Barclays'
23 German structured capital markets operations
24 during that time?

25 A Sorry? Barclays German?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 213

1 Q Structured capital markets
2 operations at that time?

3 MR. OXFORD: Object to the form.

4 A Not to my recollection, no.

5 Q Were you on the approvals committee
6 for global structured capital markets at
7 Barclays at that time?

8 A No, because the U.S. had a separate
9 approvals process.

10 Q Okay. And you were on that
11 committee for the U.S.

12 Right?

13 MR. OXFORD: Object to the form.

14 A That's my recollection. I mean,
15 it's going back a long time now, so -- but
16 that's my recollection.

17 Q Okay. Could you turn forward to
18 Exhibit 5010, please? That's Tab 10 of the
19 binder. It's two tabs ahead.

20 MR. PRUDEN: Mark this as
21 Exhibit 5010.

22 (Whereupon the above mentioned was
23 marked for Identification.)

24 Q Do you have that, Mr. Wade?

25 A The -- this is the one that's

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 214

1 "Office of Chief Counsel, Internal Revenue
2 Service."

3 Q I was just getting there. Yes,
4 that's correct.

5 And do you recognize this to be the
6 more generalized term memo from the IRS that
7 addressed Cult and options baskets like Cult?

8 MR. OXFORD: Object to the form.

9 A Well, let me just take a look at
10 it.

11 (Witness reviewing.)

12 I mean, it's a very long time since
13 I have seen this, if this is the same one,
14 which -- but it seems reasonable that it is.

15 Q Okay. I'd note this e-mail is also
16 dated November 12th of 2010 based on this
17 date.

18 Right?

19 A Sorry. That, you completely broke
20 up in that question. I didn't hear you.

21 Q Sorry about that. I was turning
22 the page.

23 If you look at the release date at
24 the top, it's 11/12/10.

25 Right?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 215

1 A I can see that's what it says,
2 yeah.

3 Q Okay. And November 12, 2010 is the
4 same date as your e-mail that we just looked
5 at.

6 Right?

7 A If you tell me that it is.

8 Q Okay. I'll represent to you for
9 these purposes that it's --

10 A No, that's fine.

11 Q Okay. And one of the things that
12 the IRS addresses here is whether a taxpayer
13 should be treated as the tax owner of the
14 securities.

15 Right?

16 MR. OXFORD: And Mr. Wade, you
17 should, of course, feel free to review
18 that document before you answer
19 Mr. Pruden's question.

20 A Yeah.

21 (Witness reviewing.)

22 Sorry. So I've reviewed.

23 So can you remind me what the
24 question was?

25 Q Sure. The question was: Looking

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 216

1 at the "Issues" section and Point 2, that one
2 of the issues that's discussed in this memo
3 is "whether the tax payor should be treated
4 as the tax owner of the securities."

5 Do you see that?

6 MR. OXFORD: Object to the form.

7 A Are you talking about Point 2 of
8 the "Conclusions?"

9 Q Going to "Issues?"

10 A Sorry. "Issues."

11 Q "Whether the tax payor should be
12 treated as the tax owner of the securities."

13 Do you see that?

14 A Yeah, I see that.

15 Q Okay. And the IRS opinion around
16 this is signaling that whether someone is the
17 tax owner for tax purposes depends on the
18 revenue law of the jurisdiction.

19 Right?

20 MR. OXFORD: Objection to the form.

21 A Well, the question of who is the
22 tax owner of the securities in this case is a
23 question of U.S. tax law, if that's your
24 question.

25 Q Okay. And one of the IRS's

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 217

1 conclusions here, if you look at Point 2 in
2 "Conclusions," is that the hedge fund is the
3 tax owner because they have beneficial
4 ownership of the securities for tax purposes.

5 Right?

6 MR. OXFORD: Object to the form.

7 A Well, I read that as saying that
8 it's the IRS's position that for U.S. tax
9 purposes, the tax owner of the securities is
10 the party who has the option contract.

11 Q Is it your understanding that the
12 IRS's opinion on that issue is suppositive?

13 MR. OXFORD: Object to the form.

14 A No, because as I think I've
15 mentioned earlier, ultimately the question
16 of, you know, any given tax issue, what
17 the -- what the ultimate outcome of it is is
18 subject to the relevant tax law, which,
19 ultimately, if there's a dispute, needs to be
20 agreed by the relevant courts.

21 So I think the -- this is -- this
22 is the IRS effectively stating what their
23 position is. But that doesn't necessarily
24 mean that that is what would ultimately be
25 found to be the case as a matter of U.S. tax

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 218

1 law.

2 Q Okay. Have you ever taken a view
3 of U.S. tax law in your work at Barclays that
4 was contrary to the view that was taken by
5 the IRS?

6 MR. OXFORD: Object to form.

7 A That's a -- that's a very -- that's
8 a very wide-open question and, you know, I
9 wouldn't -- I wouldn't like to be able to be
10 specific on that.

11 In this particular case, the -- and
12 as the memo explains, it was not Barclays
13 that was taking a -- the relevant U.S. tax
14 position. It was our client.

15 Q Yeah. And that was one of the
16 reasons why Barclays continued to write the
17 options for RenTech after this memo came out.

18 Right?

19 MR. OXFORD: Object to the form.

20 A I have to be -- for the reasons I
21 gave earlier, I have to be very careful here
22 because I know, obviously, there has been a
23 significant hearing in the U.S. And I also
24 know -- I'm sure it's a matter of public
25 record that Nason Square and Flowana may

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 219

1 still be in dispute with the IRS.

2 But on this particular transaction,
3 it is fair to say there was a -- particularly
4 at this time, there was a -- there were
5 differing views on what the appropriate U.S.
6 tax consequences for this transaction were.

7 Q Okay. Well, given your
8 restrictions, let's make reference to a
9 document.

10 Can you go back to Tab 8, please?

11 A Sorry? Tab 8?

12 Q Eight, correct. It was the one we
13 were on before, the exhibits that started
14 with your e-mail.

15 Are you there?

16 A Yeah.

17 Q Okay. Can you go to the fourth
18 page? It says "Exhibit 61" on the bottom,
19 and it's a memo with a Barclays header on it.

20 A Sorry? Page?

21 Q It's the fourth page. It has a
22 Bates number at the bottom,
23 Barclays-PSI-016946.

24 A 6946. Sorry. My 6946 is Page 1 of
25 the -- a memo, "SCMUS Prudence Committee."

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 220

1 Q That's correct, you're there. And
2 this is a memo written by you and Maxim
3 Kulikov to the U.S. Approvals Committee.

4 Right?

5 A I'm just reminding myself of this.
6 (Witness reviewing.)

7 Okay. I've reviewed it.

8 Q Okay. So the question was: This
9 is a memo written by you and Maxim Kulikov to
10 the SCUS Approvals Committee.

11 Right?

12 A That's correct.

13 Q And the date of this memo is
14 October 3, 2012?

15 A That's correct.

16 Q And that's a little less than two
17 years after the November 2010 IRS memo we
18 just looked at.

19 Right?

20 A That's correct.

21 Q Okay. And this is about a new
22 option transaction, which is the Cult, and
23 then Roman 27 option transaction.

24 Do you see that?

25 A Yeah.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 221

1 Q Okay. And you're one of the
2 attendees with abbreviation "GW."

3 Do you see that?

4 A Yeah.

5 Q And then the other abbreviated
6 person is Gerard LaRosa.

7 Who's that?

8 A I can't remember exactly what his
9 job title was, but he was -- he was the chair
10 of the -- my recollection is he was chair of
11 the SCM Approvals Committee, and he was, I
12 believe, one of the directors at Barclays
13 main subsidiary in the U.S.

14 Q It says that you discussed the
15 background of the new option transaction, and
16 then that there was a lengthy discussion.

17 Do you see that below?

18 A I see where it says that, yeah.

19 Q Okay. And then the third bullet is
20 that "the tax risk is assumed by the client."

21 Do you see that?

22 A Yes.

23 Q And then the -- not the bullet
24 after that, but the one after that, it says,
25 "The new option transaction does not

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 222

1 meaningfully increase Barclays reputation
2 risk in relation to the options transactions
3 because writing a new option should be viewed
4 as the maintenance of a longstanding
5 structure."

6 Do you see that?

7 A I do see that.

8 Q Okay. So the approvals committee
9 in 2012 was recognizing that Renaissance was
10 assuming the tax risk, and also, because the
11 options structure had been ongoing, it wasn't
12 a significant risk to the bank to write a new
13 one.

14 Would you agree?

15 MR. OXFORD: Object to the form.

16 A So what was -- there were two parts
17 to that question, What was -- the first part
18 was?

19 Q Sure. Let me address Mr. Oxford's
20 objection.

21 The first thing is that the
22 committee recognized that the tax risk was
23 assumed by the client.

24 Right?

25 MR. OXFORD: Object to the form.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 223

1 A That's -- that's what it says.

2 Q Okay. And it also says that the
3 new option transaction, which is "this
4 transaction doesn't meaningfully increase
5 reputation risk because writing a new option
6 should be viewed as a maintenance of a
7 longstanding structure."

8 Right?

9 A I agree that's what it says.

10 Q Okay. And do you recall that this
11 transaction was approved?

12 A I do not recall, actually.

13 Q Okay. If you look at the last
14 sentence of the memo, the last line, if you
15 look at it, is that "the committee approved
16 the new option transactions subject to the
17 condition mentioned above."

18 Right?

19 A It does say that. But my
20 recollection of the situation around this
21 time -- and it mentions both -- the approval
22 was in effect contingent on further
23 discussions with senior management and the
24 client.

25 And I can't remember the exact

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 224

1 timing or events because this is a long time
2 ago. But I know that at some point we
3 negotiated with the clients to restructure
4 the transactions so that the particular point
5 of contention with the IRS was no longer
6 present.

7 But I do not -- I cannot recall
8 whether that was as a result of this meeting
9 or a later meeting.

10 Q Sure. And that was actually after
11 the Senate investigation into Cult.

12 Right?

13 MR. OXFORD: Object to the form.

14 A I don't recall the relevant -- the
15 relative timing of all the different events,
16 I'm afraid.

17 Q Okay. But you would agree either
18 way that the -- that Barclays continued to
19 write these options for Renaissance even
20 though the IRS had expressed a view that they
21 did not give the tax benefits that they were
22 supposed to give.

23 Right?

24 MR. OXFORD: Object to the form.

25 A I would state it differently.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 225

1 The -- the tax treatment of the options was
2 one of a number of components of a very
3 longstanding arrangement between Barclays and
4 Renaissance that related to its -- the
5 overall prime brokering services provided to
6 a very important client even before -- this
7 is my recollection now, it's a long time ago.

8 But even before the -- the notice
9 was issued by the IRS, it's my recollection
10 that discussions had been had as between -- I
11 think in some respects, in part, due to
12 voluntary disclosures which Barclays had made
13 about this structure many years earlier,
14 because we voluntarily disclosed every
15 transaction that structured capital markets
16 did to the relevant tax authorities.

17 So it's my recollection that even
18 at the point that the IRS issued their
19 notice, we were already aware that there was
20 some difference of opinion between the
21 clients and the IRS on the transactions, but
22 that on the basis that we had, you know,
23 legal advice, that the position they were
24 taking was appropriate and the basis that
25 they, you know, they had referenced

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 226

1 throughout the transaction, it was -- it's
2 clearly their tax filings and there was very
3 clear contractual arrangements around that.

4 That -- so each individual option
5 was not really a separate transaction. It
6 was part of an overall synthetic prime
7 brokerage arrangement between Barclays and
8 one of its important clients.

9 Q And do you recall at the time
10 whether Barclays itself disagreed with the
11 IRS' reading of the revenue laws that
12 prohibit the Cult transactions?

13 MR. OXFORD: Objection to form.

14 A I'm not sure that's what I just
15 said. I think our client -- my recollection,
16 and I have to be getting close to -- I mean,
17 I have to think about what my duty of
18 confidentiality to the client is -- but my
19 recollection is that the clients have made us
20 aware that the IRS was investigating, through
21 the normal IRS audit process, the
22 transactions and that they opened a
23 transparent dialogue between us, Renaissance,
24 and the IRS had already existed before the
25 IRS issued the notice that's in this pact.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 227

1 Q Okay. You were describing -- by
2 "client," were you referring to Barclays?

3 A No. By "client" I'm referring to
4 Renaissance Technologies.

5 Q I understand. Okay.

6 MR. PRUDEN: I have no further
7 questions at this time. I understand
8 that there are others who do.

9 Thank you.

10 MR. BLESSINGTON: Neil, if it's all
11 right, I've got a few questions,
12 probably five, ten minutes at most,
13 Mike. I'm looking at you, Mike. I
14 think -- where are we on time?

15 MR. BONGIORNO: We have questions
16 we want to ask first. But can we take a
17 break for maybe five minutes?

18 MR. OXFORD: Let's go off the
19 record.

20 MR. BONGIORNO: Let's go off the
21 record and we can discuss.

22 THE VIDEOGRAPHER: Stand by. The
23 time is 1:34 p.m. New York time and
24 we're going off the record.

25 (Brief recess taken.)

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 241

1 That is the result of some
2 discussions that must have happened prior to
3 the sending of that e-mail.

4 Q And that -- and those discussions
5 could have taken place between Morgan Stanley
6 and ED&F, and not Acer?

7 MR. OXFORD: Objection to form.

8 A Based on my experience and the
9 general nature of the relationship between a
10 client and its prime broker, it would be very
11 surprising to me if Acer were not in any way
12 involved in those discussions.

13 Q All right.

14 MR. BLESSINGTON: I have no further
15 questions. Thank you, Mr. Wade and
16 sorry, Julia.

17 MR. OXFORD: Thanks, John. Thanks.
18 Anybody else?

19
20 EXAMINATION BY MS. MCCARTHY:

21 Q I'm Sharon McCarthy from Costello &
22 Fink. I represent John Van Merkensteijn.
23 Mr. Wade, I'm just going to ask you a few
24 questions.

25 You've testified a bit about your

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 242

1 time at Barclays and I want to ask you about
2 Project Cum Ex.

3 Are you familiar with that,
4 Mr. Wade?

5 MR. OXFORD: Object to the form.

6 A I think as I stated earlier today,
7 I'm aware as a matter of public record that
8 Barclays undertook certain cum ex
9 transactions, so yes.

10 Q Are you familiar with the details
11 of Project Cum Ex and how Barclays conducted
12 cum ex transactions?

13 MR. OXFORD: Object to the form.

14 A As I've already said earlier today,
15 I was not personally involved in the
16 execution of those transactions and they were
17 undertaken a very long time ago. So I would
18 not be able to discuss specific details of
19 those transactions.

20 Q Well, I'm going to ask you to take
21 a look at Exhibit 5019.

22 (Whereupon the above mentioned was
23 marked for Identification.)

24 A Is that File 2? Which --

25 MR. OXFORD: Can you help us out

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 243

1 with the binder, Sharon?

2 MS. MCCARTHY: Binder 2. It's the
3 second exhibit.

4 MR. OXFORD: This is the ED&F
5 binders?

6 MS. MCCARTHY: Yes.

7 MR. OXFORD: Okay. Thank you.

8 MS. MCCARTHY: Sorry about that.

9 MR. OXFORD: That's okay. I just
10 want to make sure we're all at least
11 starting on the same document and then
12 we can try to get to the same page.

13 A So my number "9" is the --

14 Q 5019? It's 19.

15 A Sorry, sorry.

16 MR. OXFORD: So that's not in the
17 second binder.

18 MS. MCCARTHY: You must have
19 different binders.

20 MR. OXFORD: Okay. I think we're
21 on the same document now.

22 Q And Mr. Wade, is it fair to say
23 that Exhibit 5019 is a memo -- Barclays memo
24 to the SCM Approvals Committee on
25 January 22nd of 2010?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 244

1 A It's actually -- and I can tell
2 this from the -- the legend at the top, it's
3 actually a copy of that memo that was
4 submitted on a voluntary basis to HMRC.

5 Q Okay. Have you seen this before?

6 A Yes, I believe I have.

7 Q And I just want to represent to you
8 that this was a document taken off the
9 Internet and the green highlighting was there
10 when it was taken off. So that is not
11 something that we highlighted on purpose.
12 That's how it came out.

13 So are you familiar, then,
14 Mr. Wade, with the contents of this document?

15 A I'm not fully familiar with all the
16 details of it. But the reason I recognize
17 this document is, as I said, it was submitted
18 to the U.K. tax authorities and the German
19 tax authorities, and then it was subject of a
20 leak, and I -- I recall because at the time
21 of that leak, I was, I believe, the global
22 head of SCM.

23 So I have seen this memo before in
24 that context.

25 Q Okay. And you are familiar with

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 245

1 the fact that Barclays engaged in cum ex
2 trading in Germany.

3 Correct?

4 MR. OXFORD: Object to the form.

5 A I think I've already said it's a
6 matter of public record that yes, Barclays
7 undertook cum ex transactions in Germany --

8 MR. OXFORD: Hold on, Sharon. He
9 wasn't finished with his answer.

10 Please continue, Mr. Wade.

11 A Undertook transactions in Germany
12 prior to 2012.

13 Q Okay. And are you aware that in
14 connection with that, Barclays was a short
15 seller?

16 MR. OXFORD: Object to form.

17 A If I can just --

18 MR. OXFORD: Yeah, take a moment to
19 review the memo if you need it to answer
20 the questions, Mr. Wade.

21 A (Witness reviewing.)

22 MR. OXFORD: Sharon, there's a lot
23 of background noise where you are. We
24 didn't have the problem with the other
25 examiners.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 246

1 Is there a way to mute the mics in
2 what I assume is a very large room?

3 MS. MCCARTHY: I'll mute it when
4 I'm not speaking. How's that?

5 MR. OXFORD: You -- but can you
6 mute the rest of them and let you speak?

7 MS. MCCARTHY: I don't think any
8 other mics are on.

9 MR. OXFORD: Okay. Thanks for
10 checking.

11 A So yes, it appears that under the
12 terms of this memo, the expectation was that
13 Barclays would be acting as a short seller.

14 However, it's my recollection that
15 no transactions were undertaken as a result
16 of this memo. But that's a recollection and
17 I can't be a hundred percent sure on that.

18 Q So you don't think that Barclays
19 actually engaged in any cum ex trades?

20 A No. That's --

21 MR. OXFORD: Object to the form.
22 Not what he said.

23 A No, that's not what I said.
24 This -- this memo was produced in 2010 and it
25 was discussing the potential for transactions

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 247

1 to take place in 2010.

2 And as it notes, by that point
3 there was already starting to be some
4 question marks about whether this specific
5 procedural rule in Germany on which previous
6 cum ex transactions had taken place was
7 either effective or even if it was legally
8 permissible, was something that the German
9 tax authorities thought was appropriate.

10 And this is my recollection. I
11 can't be a hundred percent sure, but my
12 recollection is as a result of the
13 discussions that followed from this memo, a
14 decision was taken that Barclays would not
15 conduct any further cum ex transactions.

16 But that's -- I was not personally
17 involved in those discussions at the time.
18 But in my responsibility in later years, and
19 in particular in dealing with the leak of
20 this document, that is my recollection of
21 what happened.

22 Q If you turn to Page 2 of
23 Exhibit 5019, in the middle, right above
24 "Trade Execution?"

25 A Yeah.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 248

1 Q It says, "On this basis,
2 BCSL" -- which is Barclays, correct?

3 MR. OXFORD: Objection to the form.

4 A Yes.

5 Q -- "intends to continue to execute
6 Project Cum Ex to the extent that market
7 demand exists. Consistent with the 2009
8 year, initial indications are that market
9 participants continue to have appetite."

10 Does that suggest to you, sir, that
11 Barclays had been engaging in cum ex
12 transactions, since it says it "intends to
13 continue to execute Project Cum Ex?"

14 MR. OXFORD: Objection to the form.

15 Asked and answered.

16 A I believe I've already confirmed
17 and I think it's a matter of public record
18 that Barclays did execute some cum ex
19 transactions.

20 My point is that my recollection,
21 and this is a long time ago, and I wasn't
22 directly involved in the particular
23 conversations around this approvals process,
24 the SCM approvals process starts with a
25 business proposing a suggested transaction.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 249

1 But then the whole point of the
2 process is that all the appropriate
3 governance process within Barclays and all
4 the infrastructure areas need to consider to
5 review that transaction, there are often
6 follow-up conversations, due diligence,
7 conditions, all those other kind of things.
8 And I can say and it's my recollection that,
9 you know, the German tax authorities by this
10 stage had already put out some slightly
11 ambiguous changes in rules, changes in
12 guidance, that the market at this time was
13 trying to digest.

14 And my recollection is that
15 notwithstanding approval was requested to
16 continue doing transactions, that ultimately
17 a decision was made not to do any
18 transactions for -- in 2010. But that's my
19 recollection and I cannot be a hundred
20 percent sure on that.

21 Q Okay. So Barclays did engage in
22 cum ex transactions. They were a short
23 seller.

24 Correct?

25 MR. OXFORD: Object to form. Asked

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 250

1 and answered.

2 A It is -- as I've said, it's my
3 recollection and I believe it's public
4 information that Barclays did enter into
5 cum ex transactions at the exact details of
6 what those particular transactions were and
7 Barclays role in them.

8 I was not personally involved and I
9 can't recollect. But I think in general
10 Barclays was -- we were -- we were not
11 a -- we were a U.K. entity, and so generally,
12 I would have expected us to be on the selling
13 side.

14 But I can't remember the full
15 details of any and all transactions which
16 Barclays may have undertaken.

17 Q Mr. Wade, would you have expected
18 Barclays to inform the purchaser that it was
19 selling short?

20 MR. OXFORD: Object to form.

21 A Well, I think there are some
22 important differences between the way
23 Barclays executed its cum ex transactions
24 from the transactions in this case.

25 Obviously, there's --

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 251

1 Q Well, I'm just asking
2 you a -- Mr. Wade, sorry. I'm just asking
3 you literally a yes-or-no question.
4 That's -- it's literally a yes-or-no
5 question.

6 MR. OXFORD: Okay. So, Mr. Wade,
7 you don't have to answer the question
8 "yes" or "no" if the answer is not "yes"
9 or "no."

10 Mike, can you please read back the
11 question that Sharon asked? Can you
12 read back the portion of the answer the
13 witness was permitted to give before he
14 was interrupted by Ms. McCarthy?

15 (Whereupon the record was read back
16 by the reporter.)

17 MR. OXFORD: Please continue.

18 A Okay. Obviously, Barclays at that
19 time, and still is, a significant market
20 maker in a number of securities, and has a
21 range of equity finance activities.

22 And my recollection, and I can see
23 it in this thing, there were a number of
24 execution conditions on Barclays in
25 particular that it would only be done on

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 252

1 exchange, by which my understanding is that
2 this was a -- primarily a pricing arbitrage
3 and that we did not know who we were selling
4 the shares to, and therefore would have been
5 unable to make any representations to.

6 And I don't think that -- I think
7 the facts in the -- I'm not sure whether we
8 are talking about ED&F Man or Solo here.
9 Obviously, in the Solo case, there were no
10 shares, so it's very easy to distinguish.

11 But even in the case of ED&F Man, I
12 think for all the reasons given in my report,
13 it's clear that the counterparties did
14 know -- the short sellers did know who they
15 were -- who they were selling to.

16 Q So the answer to my question is
17 "no?"

18 MR. OXFORD: Object to form.

19 A The --

20 Q Barclays would not have told the
21 purchaser that it was selling short.

22 Correct?

23 MR. OXFORD: Object to the form.

24 Asked and answered.

25 A The answer to my question -- to

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 253

1 that question was that my recollection is
2 that the way Barclays executed any cum ex
3 transactions that it did was very different
4 and it would not have known who it was
5 selling to. And so, therefore,
6 definitionally, it would have been impossible
7 for it to make any representations.

8 But it's a very long time ago and I
9 wasn't directly involved in the execution of
10 those transactions. So those caveats
11 definitely apply.

12 Q Mr. Wade, when Barclays borrowed
13 the shares, it would not have known if the
14 counterparty it borrowed from was the same
15 entity to whom it sold.

16 Is that correct?

17 MR. OXFORD: Object to the form.

18 A No, I don't think that's correct.

19 Q What do you base that on?

20 A Well, the basis is that
21 Barclays — the type of entities and
22 counterparties for who Barclays borrowed
23 shares from were completely different types
24 of entities than the types of entities that
25 would be in the market to execute

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 254

1 exchange-based equity purchases on a cum ex
2 basis.

3 Q So sir, in your -- is it your
4 understanding -- withdrawn.

5 Your understanding is that
6 reputable market participants conducted
7 cum ex trades in Germany until 2012 because
8 German tax provisions created a possibility
9 that the economic owner should be entitled to
10 the dividend and therefore to the set tax
11 certificate related thereto.

12 Is that correct?

13 MR. OXFORD: Object to the form.

14 A No, that's not correct.
15 That's -- and the reason for that is that the
16 specific procedure, which is obviously now
17 heavily disputed in Germany, was one where,
18 in the situation of a cum ex transaction
19 which resulted in a dividend compensation
20 payment, notwithstanding that the payment was
21 a dividend compensation payment, the -- the
22 custodian of that dividend compensation
23 payment was, under this procedural rule, in
24 title straight requires to issue a specific
25 type of tax voucher.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 255

1 In other -- in relation to that,
2 there were often situations where the short
3 seller would have to withhold German tax on
4 that dividend compensation payment. But that
5 rule did not apply to -- and this is my
6 recollection -- that rule did not apply to
7 foreign financial institutions.

8 And it was on the basis of that
9 understanding that a number of market
10 participants undertook cum ex transactions in
11 Germany.

12 And as explained in this memo,
13 starting firstly in 2009, the German tax
14 authorities began a process of changing those
15 rules and issuing guidance around those
16 rules, which ultimately lead into a complete
17 change of the rules which had effect from the
18 beginning of 2012.

19 Q Mr. Wade, I just want to alert you
20 to the fact that I was reading from your
21 reply report that you disagreed with.

22 So if you could turn to
23 Exhibit 5003, which is your reply, and go to
24 Page 5, Paragraph 10?

25 A I'm sorry. 5003?

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 256

1 Q Paragraph 10, Page 5.

2 A I must be looking at the wrong
3 thing.

4 MR. OXFORD: It's your reply
5 report, Mr. Wade. It should be Tab 3.

6 A Yeah. Page 10?

7 MR. OXFORD: No, it's Page --

8 MS. MCCARTHY: Paragraph 10.

9 MR. OXFORD: Ten. Paragraph 10.

10 A Sorry. I was on page 10. Okay.
11 I'm -- yeah.

12 Q And is it -- is it accurate that
13 your report indicates that in -- the only
14 jurisdiction that you're aware of where
15 reputable market participants ever considered
16 deliberately conducting cum ex trades was
17 Germany prior to 2012.

18 "The only jurisdiction that I'm
19 aware of where reputable market participants
20 ever considered deliberately conducting
21 cum ex trades was Germany prior to 2012. The
22 ESMA report confirms my understanding and
23 states that, quote, BaFin, the German banking
24 regulator, reported that until 2012, a
25 controversial reading of the German tax

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 257

1 provisions seems to have created a
2 possibility that the economic owner should be
3 entitled to the dividend and therefore to the
4 tax certificate related thereto."

5 Your report, sir, does that -- did
6 I accurately read your report there on
7 Paragraph 10?

8 A You've -- you have accurately read
9 Paragraph 10. I agree.

10 Q Okay. And then, in your next
11 paragraph, Paragraph 11, you state that the
12 relevance of the year 2012 is that "with
13 effect from January 1, 2012, Germany changed
14 its tax law related to the dividend
15 withholding tax, thereby removing any doubt
16 on the question of the availability of a
17 reclaim on a dividend compensation payment in
18 a cum ex transaction."

19 Is that accurate?

20 A That is accurate.

21 Q All right. Sir, do you have any
22 knowledge of what the Danish law is or was
23 relating to cum ex transactions until 2015?

24 MR. OXFORD: Objection to form,
25 asked and answered.

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 258

1 A I have, from my time at Barclays
2 and my responsibilities there, Barclays --
3 every -- on an annual basis obtained legal
4 advice relating to the types of equity
5 finance transactions and execution rules in
6 all the European jurisdictions in which it
7 operated. There was an annual review of
8 those rules and annual approval of execution
9 guidelines.

10 And based on that understanding,
11 and also my wider understanding of what other
12 market participants were doing in the market
13 at the relevant times, I outside -- as I say
14 in this particular section -- outside of
15 Germany and after 2012, before getting
16 involved in this case, I was -- I had -- I
17 would go further and say I have no awareness
18 of people doing cum ex.

19 I think it's a positive view of the
20 market that cum ex transactions did not work
21 and could not work, and the main reason for
22 that being that absent a very specific
23 procedural rule which Germany had relating to
24 compensation payments, there was no basis for
25 it to work. Because if you receive a

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 259

1 dividend compensation payment and there isn't
2 some explicit, you know, basis on which to
3 make a reclaim, then there's no basis for
4 thinking that a withholding tax reclaim could
5 be made.

6 Q So, in answer to my question, are
7 you specifically familiar with the Danish tax
8 law as it existed between 2012 and 2015
9 related to cum ex transactions?

10 MR. OXFORD: Object to the form.
11 What is your question?

12 MS. MCCARTHY: Does he have any
13 specific knowledge of the state of the
14 Danish tax law as it relates to cum ex
15 transactions between the years 2012 and
16 2015.

17 MR. OXFORD: Objection, asked and
18 answered.

19 A So on the basis of the work that
20 Barclays did in which -- for which I was
21 responsible for at the relevant period of
22 time, and the obtaining of advice and market
23 understanding and discussions about various
24 transactions and the execution rules that
25 Barclays had, I -- it is my understanding

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 260

1 that outside Germany, it was a very
2 well-understood position of reputable market
3 participants that a cum ex transaction could
4 not give rise to a withholding tax reclaim.

5 Q So no specific knowledge of the law
6 in Denmark.

7 Is that correct?

8 MR. OXFORD: Objection, asked and
9 answered. I think twice.

10 MS. MCCARTHY: I actually haven't
11 gotten a direct answer to that question,
12 Neil, so I would like an answer to that
13 question.

14 MR. OXFORD: My objection is on the
15 record. If you -- you can answer the
16 question, Mr. Wade, as many times as you
17 like.

18 A As I've said, on the basis of the
19 annual process that Barclays undertook and
20 all the other knowledge I had in being
21 involved in the market at the time, it is my
22 understanding that the only place where any
23 market participant thought that cum ex might
24 give rise to a tax reclaim in the hands of
25 the purchaser under a cum ex transaction was

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 261

1 Germany and was prior to 2012.

2 Q I'm going to ask you just another
3 question on short selling.

4 When Barclays was a short seller,
5 is there any way it would have known if it
6 borrowed shares indirectly from the purchaser
7 of the shares?

8 MR. OXFORD: Object to the form.

9 A I was -- I was not directly
10 involved in the execution of those
11 transactions, so it's difficult to give an
12 answer to that.

13 But my general understanding is
14 that the typical counterparties from whom
15 Barclays would borrow shares would be the
16 large asset managers' pension funds and agent
17 lenders, and it would be highly unlikely that
18 they were also acting as a cum ex purchaser,
19 directly or indirectly, in the transaction by
20 the nature of what they do.

21 Q So highly unlikely, yet possible.
22 Correct?

23 MR. OXFORD: Object to the form.

24 A As I've said, because I was not
25 personally involved in the execution of these

CONFIDENTIAL
Graham Wade – March 16, 2022

Page 262

1 trades, it was a very long time ago, and I
2 don't know all the -- all the ins and outs of
3 it.

4 In the case of Barclays, it is, I
5 guess, theoretically possible that in the
6 case of the particular transactions that I've
7 reviewed for this case, it's my opinion that
8 it's -- it's clear to see where the shares
9 came from.

10 In the case of Solo, there were no
11 shares, and in the case of ED&F Man, we can
12 see that the shares had been recycled back.

13 MS. MCCARTHY: I have no further
14 questions. I will just mute for a
15 moment while we re-setup.

16 (Whereupon a discussion was held
17 off the record.)

18 EXAMINATION BY MR. BONGIORNO:
19

20 MR. BONGIORNO: Good evening,
21 Mr. Wade.

22 A Good evening.

23 Q My name is Mike -- what's that?

24 A It's very dark here.

25 Q Yeah. Well, it's still light over